HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25514 OF 2007

Dated:30.11.2007

Between:

M/s. Ballarpur Industries Limited,
6/6-2/10, 6th ward, Chinna Veedhi,
Vizianagaram rep., by its
Deputy General Manager (RM),
Naveen Kumar Agarwal.

..Petitioner

And

1. The Commercial Tax Officer,
   M.G. Road (East), Vizianagaram and others.

..Respondents.

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to quash the order dated 28.7.2007 passed by the 3rd respondent in CCT's Ref.No.LV(3)/336/2007 refusing to grant stay of collection of disputed tax for the assessment year 2001-2002 under APGST Act and consequently, to restrain the 1st respondent from taking any coercive steps for recovery of the disputed tax for the assessment year 2001-02 pending disposal of the appeal before the Sales Tax Appellate Tribunal, Visakhapatnam and also to set aside the notice of the 1st respondent, dated 23.11.2007.

The main grievance of the petitioner is that an appeal has been preferred before the Sales Tax Appellate Tribunal against the revision orders passed by the 2nd respondent and the same is pending. The petitioner has also filed an application before the 3rd respondent seeking stay of recovery of disputed tax and the said application was rejected on 28.7.2007 and under the guise of rejection of stay, the 1st respondent issued garnishee notice dated 23.11.2007. Aggrieved by the same, the present writ petition is filed by the petitioner.

Heard the learned Counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax and perused the

material available on record.

It is the contention of the learned Counsel for the petitioner that an appeal is pending before the Sales Tax Appellate Tribunal as to the assessment of disputed tax and in such a situation, rejection of stay application by the 3rd respondent and the demand of the 1st respondent by issuing garnishee notice for payment of disputed tax pending the appeal, under the guise of rejection of stay, are illegal and unjustified and at this juncture, if the relief as to the stay of the proceedings is not entertained and if the recovery of the disputed tax in question is effected during the pendency of the appeal before the Sales Tax Appellate Tribunal, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the Sales Tax Appellate Tribunal, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted, but subject to imposition of certain conditions.

At this stage, it is the contention of the learned Counsel for the petitioner that if the garnishee notice is not revoked, it is much difficult to operate the account to meet the regular transactions and also to comply with the order of this Court.

In view of the above submission, We deem it appropriate to revoke the garnishee notice so as to enable the petitioner to continue the operation of the account and comply with the conditions that would be imposed while granting stay by this Court.

Accordingly, the impugned garnishee notice be revoked. There shall be interim stay of recovery of disputed tax till the disposal of the appeal pending before the Sales Tax Appellate Tribunal subject to the condition of the petitioner depositing 50% of the disputed tax within a period of six weeks from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum. It is further made clear that in case of non-compliance of the above order, the garnishee notice becomes operative.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 30th November, 2007
Note:
Communicate by wire
At partys costs.
(BO)
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25514 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

30/11/2007